

37 Am. Jur. 2d Fraud and Deceit § 74

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Fraud and Deceit

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IV. False Representations

B. Necessity that Representation Be of Fact; Opinions

3. Qualifications of, and Exceptions to, Rule Holding Opinions Nonactionable

a. In General

§ 74. Opinion deliberately given falsely with intent to deceive

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West's Key Number Digest

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The expression of an opinion not in reality entertained may constitute actionable fraud where it is stated falsely and with intent to deceive.¹ Redress may be had for the dishonest expression of an opinion contrary to that really entertained by the speaker, especially if he or she is an apparently disinterested third person or if a deliberately false opinion is expressed in terms importing personal knowledge of its truth.² Otherwise stated, a statement purporting to be an opinion may be the basis for fraud if, at the time it is made, the maker of the statement holds an opinion contrary to the opinion he or she expresses, and the maker also intends to deceive the listener.³ Yet another formulation of the rule is that where a speaker gives an opinion when he or she is aware of facts incompatible with such opinion, the opinion may amount to a false statement of fact if made with the intention of deceiving or misleading.⁴

Observation:

This rule recognizes that the state of any person's mind at a given moment is as much a fact as the existence of any other thing.⁵

Footnotes

- ¹ Republic Bank & Trust Co. v. Bear Stearns & Co., Inc., 683 F.3d 239 (6th Cir. 2012) (applying Kentucky law); Perez v. Alcoa Fujikura, Ltd., 969 F. Supp. 991 (W.D. Tex. 1997) (applying Texas law); Country Cove Development, Inc. v. May, 143 Idaho 595, 150 P.3d 288 (2006).
- ² Bank of America Nat. Trust & Sav. Ass'n v. Hutchinson, 212 Cal. App. 2d 142, 27 Cal. Rptr. 787 (2d Dist. 1963); Kritzer v. Moffat, 136 Wash. 410, 240 P. 355, 44 A.L.R. 681 (1925).
- ³ Leftwich v. Gaines, 134 N.C. App. 502, 521 S.E.2d 717 (1999).
- ⁴ Country Cove Development, Inc. v. May, 143 Idaho 595, 150 P.3d 288 (2006).
- ⁵ Leftwich v. Gaines, 134 N.C. App. 502, 521 S.E.2d 717 (1999).

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